

DOCUMENT RESUME

03807 - [B2914166]

Canal Zone Position:--Erroneous Payments of Tropical Differential. B-188000. October 12, 1977. 3 pp.

Decision by Paul G. Deabbling, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Justice: Office of the Attorney General; Department of Justice.

Authority: Federal Claims Collection Act of 1966 (P.L. 85-550; 72 Stat. 407; 31 U.S.C. 951-53). 5 U.S.C. 5584. 28 U.S.C. 548. B-181467 (1976). 4 C.F.R. 104. B-179186 (1973). 4 C.F.R. 91 et seq. 35 C.F.R. 253.135. 35 C.F.R. 253.8(b)(3).

The Assistant Attorney General for Administration of the Department of Justice requested an advance decision concerning erroneous payments of the tropical differential to various individuals who held Department of Justice posts in the Canal Zone since 1959. Overpayments made since 1970 which can be identified by amount and individual concerned may be waived; collection action on overpayments made to unknown individuals and in unknown amounts prior to 1970 may be terminated since the cost of collection would exceed the amount of recovery.
(Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-188060

DATE: October 12, 1977

**MATTER OF: Canal Zone positions - Erroneous payments
of tropical differential**

DIGEST: Tropical differential was erroneously paid to persons in U.S. Attorney's Office and U.S. Marshal's Office in Canal Zone since 1959. Overpayments since 1970 which can be identified by amount and individual concerned may be waived under 5 U.S.C. § 5584. As for overpayments prior to 1970 to unknown individuals and in unknown amounts, collection action may be terminated under Federal Claims Collection Act since cost of collection would exceed amount of recovery.

This action is in response to a request for an advance decision from the Assistant Attorney General for Administration, Department of Justice, concerning erroneous payments of tropical differential to various individuals who held posts in the U.S. Attorney's Office and the U.S. Marshal's Office in the District of the Canal Zone since 1959.

The administrative report indicates that since 1959 persons holding the positions of U.S. Attorney, Assistant U.S. Attorney, U.S. Marshal, Chief Deputy U.S. Marshal, and Deputy U.S. Marshal in the Canal Zone have been receiving tropical differential under the provisions of the Act of July 25, 1958, Pub. L. No. 85-550, 72 Stat. 407, and 35 C.F.R. § 253.135. However, in 1976 it was brought to the attention of the Department of Justice that such payments were in contravention of the provisions of 35 C.F.R. § 253.6(b)(3) which specifically excludes positions in the U.S. Attorney's Office and the U.S. Marshal's Office from receiving such differential. The report states:

"In excluding the U.S. Attorney and Assistant U.S. Attorneys from the tropical differential the Attorney General may have viewed 28 U.S.C. § 548 as a more flexible and appropriate means to establish their compensation. However, neither the Executive Office for U.S.

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Attorneys nor the Administrative Counsel has uncovered the policy determination that led the Attorney General to recommend to the Secretary of the Army in 1959 to exclude the U.S. Marshals Office from the tropical differential. Whatever those reasons, it appears, in light of the payment of that differential to these positions, that this exclusion was misinterpreted from its inception by all concerned."

The administrative report also indicates that this allowance was a factor in inducing and recruiting qualified personnel to accept these positions and that, due to the absence of any indication of fraud, misrepresentation, fault, or lack of good faith on the part of these individuals, collection of these overpayments would be inequitable. In a supplemental report the Department of Justice states that it is unable to provide a complete record of the differential payments and the employees concerned since 1959, but the report does indicate for the past 6 years who received tropical differential over what period of time and in what amount. The following individuals received erroneous payments of tropical differential during the period from 1970 to 1976:

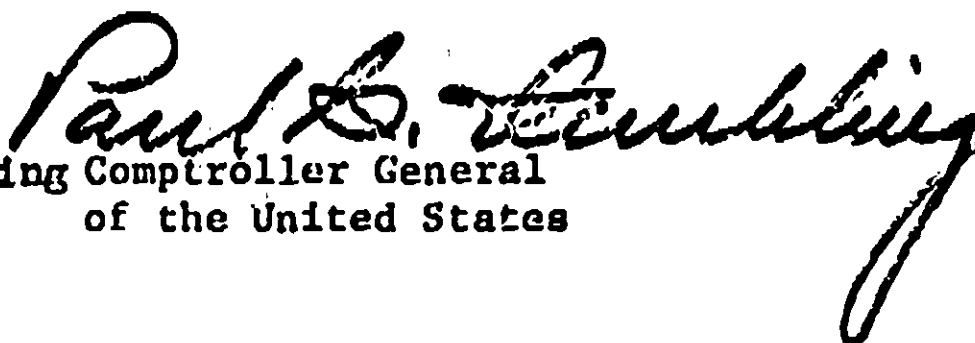
<u>Name</u>	<u>Period of Service</u>	<u>Amount of Overpayment</u>
Rowland K. Hazard	6/70 to 10/70	approximately \$ 1,500
Lester Engler	11/70 to 6/76	" 24,100
Wallace D. Baldwin	6/70 to 7/76	" 21,000
Thomas E. Haney	12/71 to 7/76	" 11,200
Clayburne A. McLelland	6/70 to 7/76	" 16,500
C. J. Spiros	11/70 to 7/76	" 9,900
John L. Brown	12/73 to 7/76	" 4,900

With regard to the above-named individuals, we hereby waive the overpayments under the authority of 5 U.S.C. § 5584 (Supp. V, 1975) and 4 C.F.R. Part 91 et seq. (1977) since the overpayments were the result of administrative error and there is no indication of fault or lack of good faith on the part of the employees in accepting the payments.

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As to the period prior to 1970, these overpayments would not be subject to waiver under 5 U.S.C. § 5584 since there is no authority for waiving unknown debts owed by unknown individuals. See B-179186, October 24, 1973. However, under the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1970), and the regulations contained in 4 C.F.R. Part 104 (1977), collection action on claims may be terminated where it appears likely that the cost of further collection action will exceed the amount of recovery. The Department of Justice has stated that administrative difficulties in determining the overpayments during this period and locating the employees involved might be greater than the ultimate recovery and, therefore, we believe these overpayments meet the standards for termination of collection. See Matter of Clark Air Base, B-181467, July 29, 1976.

Accordingly, the overpayments since 1970 are hereby waived and the overpayments prior to 1970 need not be pursued.


Acting Comptroller General
of the United States